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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

ALVA G. WISE  
DEEDS  
N.C.

THIS DECLARATION, made on the date hereinafter set forth by The Hatterasman, a North Carolina limited partnership, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Hatteras Township, County of Dare, State of North Carolina, which is more particularly described as:

All of that certain parcel of land shown on the plat entitled The Hatterasman Sub-division, which appears of record in the Office of the Register of Deeds of Dare County, North Carolina, in Plat Cabinet B, Page 196 which is more particularly described in the attached Exhibit A, which is herein incorporated by reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Hatterasman Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described.

Section 4. "Common Area" shall mean all real property, together with all improvements thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All that land designated "Common Area" as shown and described on the plat entitled The Hatterasman Subdivision, which appears of record in the Office of the Register of Deeds of Dare County, North Carolina, in Plat Cabinet B, Page 196, together with all easements for boardwalks, utilities, drainage or signs reserved by that plat. The numbered lots are not part of the "Common Area."

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties.

Section 6. "Declarant" shall mean and refer to The Hatterasman, a North Carolina limited partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Invitee - User" shall mean and refer to any person who is not a Member of the Association as defined in Article I, Section 7 and Article III, Section 1 of this Declaration who becomes entitled to the use of any common facilities erected on the Properties by paying a separate charge for such use of the common facilities.

ARTICLE II.  
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any common recreational facility by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument is signed by at least two-thirds (2/3) of each class of Members, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

(e) the right of the Association to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the

Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Member(s) shall be (i) the Declarant, its successors or assigns, as to Lots retained by the Declarant upon the termination of its Class B membership, and (ii) all Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine; but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant, its successors or assigns and shall be entitled to three (3) votes for each Lot owned as to which the Declarant is not a Class A member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) upon five (5) years after the date of this Declaration.

ARTICLE IV.  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose or for the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1, of the year immediately following the conveyance of the first Lot to an Owner, there shall be no annual assessment.

(a) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed five percent (5%) of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting; in person or by proxy, at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, sub-

ject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Annual Assessment. Both annual and special assessments must be collected on a monthly basis; provided, however, each Lot owned by the Declarant shall be assessed for both annual and/or special assessments at one-fourth (1/4) or twenty-five percent (25%) of the assessment for lots owned by Owners other than the Declarant, but such twenty-five percent (25%) assessment ratio for a particular Lot owned by the Declarant shall terminate immediately upon the transfer of said Lot from the Declarant to an Owner other than the Declarant and thereafter, the full one hundred percent (100%) assessment for such Lot shall apply.

Section 7. Date and Commencement of Annual Assessments:  
Due Dates. The annual assessments provided for herein shall be collected on a monthly basis and shall commence as to all Lots on the first day of the month following the closing on the fifth Lot to be purchased in The Hatterasman. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each Lot. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. At the request of an Owner, the Association shall establish an automatic draft of the Owner's bank account for payment of the Owner's monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments:  
Remedies of the Association. Any assessment not paid within ninety (90) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for such assessments as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

ARTICLE V.  
ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, a notification of the submission of plans and specifications should be given to the Board, or its designated committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after notification of the submission of plans and specifications has been given, approval will not be required and this Article will be deemed to have been fully complied with. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by the Dare County Planning Board.

ARTICLE VI.  
USE RESTRICTIONS

Section 1. Land Use and Building Type. No residential Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any residential Lot other than one single-family dwelling not to exceed three stories in height. Provided, however, that a duplex dwelling may be constructed on a combination of any two or more of the Lots numbered other than 13 through 19, inclusive, or any one of the Lots numbered 13 through 19, inclusive. Provided further that Lots 1 through 4, 31 through 38 and 57 through 60, inclusive, shall be used, singly or in any combination, for commercial purposes if such Lots are initially sold by the Declarant for such purposes. No building shall be erected, altered, placed or permitted to remain on any commercial Lot other than one commercial structure, and its appurtenant storage or cooler facilities, not to exceed two stories in height. Any building erected, altered, placed or permitted to remain on any Lot, whether residential or commercial, shall be subject to the provisions of Article V of this Declaration relating to architectural control.

Section 2. Building Specifications. No building shall be permitted having a first floor area of the main structure, exclusive of open porches, of less than 800 square feet for a one-story building nor a first floor area of less than 450 square feet for a building of more than one story.

Section 3. Setback Requirements. No building shall be erected on any residential Lot within thirty (30) feet of the front line of the Lot, eight (8) feet of the side line of the Lot or fifteen (15) feet of a side street line. In addition, no building shall be erected closer to the rear line of the Lot than a distance equal to twenty percent (20%) of the depth of that Lot; provided, however, that such rear setback requirement shall not exceed a

distance of twenty (20) feet from the rear line of the Lot. When one owner acquires two or more adjoining Lots, then and in that event, the adjoining one or more Lots may be used as one building site, in which event the setback requirements referred to in this Section shall apply to the outside perimeter property line of the combined Lots acquired by a single owner.

Section 4. Signs. No signs or other advertising devices shall be displayed so as to be visible from the exterior of any living unit or be posted in the Common Area, with the exception of a single "For Sale" or "For Rent" sign, without the written permission of the Board of Directors of the Association; provided that nothing herein contained shall prevent the Declarant from erecting signs necessary to the promotion and marketing of Lots.

Section 5. Animals. No pets other than household pets shall be kept in or on the Properties at any time. No savage or dangerous animal shall be kept. No pets may be raised or bred for sale or maintained for commercial purposes. Further, the Board of Directors of the Association may require the permanent removal of any pet causing or creating a nuisance or unreasonable disturbance or noise and such a decision of the Board of Directors of the Association shall be absolute and final. Moreover, the Board of Directors of the Association may promulgate such further rules and regulations concerning pets kept in or on the Property as it deems just and proper. Any cleaning or repair of the Common Area as a result of damage or soiling by a pet shall be the responsibility of the Member who owns that pet, and, upon the failure of that Member to promptly clean or repair such damage, the Board of Directors of the Association is authorized to have such cleaning or repair performed and collect the cost thereof from that Member.

Section 6. Prohibition on Use of Common Area. The Common Area shall not be used for storage of supplies, personal property, or trash or refuse of any kind, except that trash or refuse may be stored for collection in the receptacles obtained for that purpose by the individual Owners. Neither shall the Common Area be used in any way for the drying, shaking or airing of clothing or other fabrics. In general, no activity shall be carried on nor any condition maintained by any Owner upon the Common Area which despoils the appearance of the Properties.

Section 7. Nuisances. No nuisance shall be allowed upon the Properties and no person shall engage in any use, practice or activity upon such Properties which is noxious, offensive or a source of annoyance to any Owner or which interferes with the peaceful possession and proper use of the Properties by an Owner. All parts of the Properties shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, and no fire hazard shall be allowed to exist.

Section 8. Damages. All damages to any portion of the Common Area caused by an Owner, his family, friends, guests, tenants or servants shall be paid for by the Owner.

Section 9. Temporary Structures. No structure of a temporary character, including but not limited hereto, any trailer of any kind, tent, shack, garage, barn, or other outbuilding shall be used or allowed on any Lot at any time either temporarily or permanently, except such temporary structures as may be necessary for the storage of materials or the convenience of workmen during the erection of residences upon said Lot, and such temporary structures as may be required by Declarant during the period of

development and sale. No temporary structure provided for the storage of materials or the convenience of workmen shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 10. Enclosure of Garbage. All service utilities, fuel tanks and woodpiles shall be located beneath the structure constructed on a Lot or Lots. All trash and garbage accumulations are to be placed within an enclosure constructed at the expense of the Owner, according to a design specified by the Board of Directors of the Association, and located at the curbside of the street on which a Lot fronts.

Section 11. Use of Lot as Street. No Lot may be used as a street, lane, way or easement over which access might be obtained to adjacent properties without the specific written consent of the Hatterasman Homeowners Association.

Section 12. Installation of Culverts. Any Owner wishing to connect a driveway which services a Lot or Lots to any street within the Hatterasman shall be required to install a suitable culvert over the drainage ditch which adjoins such street.

**ARTICLE VII.**  
**EASEMENTS**

Easements for installation and maintenance of boardwalks, utilities, drainage facilities and signs are reserved as shown on the recorded plat. In addition, easements for installation and maintenance of utilities servicing individual living or commercial units will be taken as necessary by the providers of utilities. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of boardwalks or utilities, which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, or which may obstruct the view of signs for which easements have been reserved.

**ARTICLE VIII.**  
**POOL FACILITIES**

The Declarant may, within its sole discretion and within five (5) years from the date of this Declaration, elect to construct on any Lot or Lots then retained by the Declarant a swimming pool which shall be designated as "Common Area" on a revised plat of The Hatterasman Subdivision and conveyed to the Hatterasman Homeowners Association. The Board of Directors of the Association may permit use of this pool by Invitee-Users who pay an annual membership fee to be established by the Board of Directors of the Association.

**ARTICLE IX.**  
**GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



Section 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be properly recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized representative, this the 15<sup>th</sup> day of October, 1983.

THE HATTERASMAN

By: J. M. Smith  
Managing General Partner

By: Richard P. Hession  
General Partner

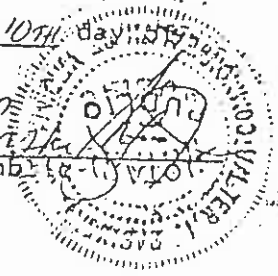
By: Donald A. Brown  
General Partner

STATE OF Virginia  
COUNTY OF Norfolk

I, WALTER J. BASNIGHT JR., a Notary Public, do hereby certify that TERRELL SMITH personally came before me this day and acknowledged the execution of the foregoing instrument as the Managing General Partner of THE HATTERASMAN, a North Carolina limited partnership, and for and on behalf of and as the act and deed of the aforesaid limited partnership.

WITNESS my hand and notarial seal, this 10th day of October, 1983.

Walter J. Basnight Jr.  
Notary Public - Virginia



My Commission Expires:  
November 22, 1985


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STATE OF Virginia  
COUNTY OF Norfolk

I, WALTER J. BASNIGHT JR., a Notary Public, do hereby certify that ALEXANDER P. KOTARIDES personally came before me this day and acknowledged the execution of the foregoing instrument as General Partner of THE HATTERASMAN, a North Carolina limited partnership, and for and on behalf of and as the act and deed of the aforesaid limited partnership.

WITNESS my hand and notarial seal, this 10th day of October, 1983.

Walter J. Basnight Jr.  
Notary Public - Virginia



My Commission Expires:  
November 22, 1985

STATE OF Virginia  
COUNTY OF: Norfolk

I, WALTER I. BASWRIGHT JR., a Notary Public, do hereby certify that DONALD S. ODEN personally came before me this day and acknowledged the execution of the foregoing instrument as General Partner of THE HATTERASMAN, a North Carolina limited partnership, and for and on behalf of and as the act and deed of the aforesaid limited partnership.

WITNESS my hand and notarial seal, this 10th day of October, 1983.

Walter I. Baswright Jr.  
Notary Public

My Commission Expires:  
November 22, 1985

NORTH CAROLINA JARE COUNTY

The foregoing Certificate(s) of Walter I. Baswright Jr. a Notary Public of Commonwealth of Va.

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Olva H. Wise Register of Deeds For Dare County  
By Barbara M. Gray Deputy Assistant-Register of Deeds

RECORDED: Oct 14, 1983

## EXHIBIT A

BEGINNING at a concrete monument in the southern margin of the right-of-way of N.C. Highway #12, which monument is located South 55° 41' 41" West 101.23 feet from the intersection of the west line of High-Tor Sands Subdivision and the south line of the right-of-way of N.C. Highway #12; thence with the southern margin of said right-of-way of N.C. Highway #12 South 55° 41' 41" West 542.34 feet to a concrete monument in the southern margin of the right-of-way of N.C. Highway #12; thence South 33° 02' 06" East 1107.50 feet to a concrete monument, a common corner with a tract of land owned by the United States National Park Service; thence with the north line of the United States National Park Service North 80° 48' 35" East 604.90 feet to a concrete monument; thence North 33° 30' West 1364.10 feet to the concrete monument, which is the point and place of BEGINNING; containing 15.52 acres, more or less, as described on a plat by W. M. Meekins, Jr. and Associates, dated December 16, 1982 and revised July 26, 1983.